Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

REPLY COMMENTS OF ALLIED PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION OF CALIFORNIA (AALLIED@) IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING ("INTERCONNECT NPRM")

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I.
THERE IS NO CONSENSUS ON A "UNIFIED INTERCARRIER COMPENSATION REGIME"

There is no consensus on the issues raised by this wide-ranging NPRM. Instead, each responding group – larger ILECs, independent telcos, CLECs, CMRS providers – has sought to preserve and extend the benefits achieved by it under the Act, while escaping corresponding burdens. The apparent agreement between cellular carriers and the larger ILECs on "bill and keep" turns out to be illusory when questions are asked about so-called "virtual NXXs" and the assignment of transport responsibilities. Even the larger ILECs disagree among themselves as to whether and how this Commission ought to mandate bill and keep.[1]

[1] By way of example: BellSouth endorses mandatory bill and keep, but Verizon fears the concept will lead to new forms of uneconomic arbitrage. SBC tries for the best of all worlds, saying it would only support bill and keep, but only if it were coupled with a nationwide upward revision of intrastate residential service rates.

These are substantive differences. There are procedural disagreements as well. Many respondents deny that the Commission has the power to mandate "bill and keep" where traffic and

costs are unbalanced. Others would concede the Commission's authority, but only for CMRS providers, thus suggesting the possibility of different compensation regimes for different technologies.[2] Finally, there is a small group that argues for plenery power in the FCC to require "bill and keep" in all situations.[3]

Under these circumstances, the Commission should make no dramatic changes in its current interpretation of the Act and implementing regulations. Such changes would risk violating the underlying statute and would intensify litigation. They may also result in increasing rather than decreasing current opportunities for uneconomic arbitrage. Finally, the across-the-board changes proposed by some would significantly re-allocate existing costs, and would impose new expenses on carriers which have already spent much in reliance on the existing regime.

II.

MANDATORY BILL AND KEEP, ESPECIALLY IN THE PAGING CONTEXT, WOULD VIOLATE THE ACT

A. No Respondent Has Credibly Argued That This Commission May Force Bill and Keep On Terminating Carriers Where There Are No Corresponding Offset

A close reading of comments in favor of mandatory bill and keep reveal an extraordinary weakness. Few if any of the parties seriously urge that this Commission has the power to force bill and keep where

2 Comments, Cellular Telephone Industry Association ("CTIA") at pp. 5 et seq.

3 BellSouth Comments, pp. 22 et seq.

there are no balancing offsets.[4] Instead all of the parties seem to allege that bill and keep is appropriate because traffic, and the

resulting costs of termination, are in closer balance. Verizon Wireless, for example, favors mandatory bill and keep, but rests its arguments on "high transaction costs and a converging balance of cost flows". Verizon Wireless Comments at p. 15. What this really means is that with an increasing percentage of land-to-mobile calls, and a corresponding reduction in symmetrical termination compensation rates, the imbalance between land-line and cellular carrier termination costs may now be too small to warrant the effort of accounting and billing for the difference.

Nor does AT&T Wireless (ATTWS") to argue that bill and keep should be required where costs are unequal. Instead, ATWS emphasizes that where costs are "approximately the same…the carrier should be indifferent as to whether it is terminating more traffic than it originates, or vice versa". Not illogically, ATTWS also argues that "the Commission should reaffirm that forward-looking incremental costs should form the basis of interconnection charges <u>and that to the extent that an individual competing carrier has costs that may be greater than those of the incumbent carrier, such competing carrier may demonstrate, and seek recovery, of such additional costs</u>." There is nothing new about the ATTWS argument: it paraphrases the conclusions reached by this Commission's First R & O at Sections 1096 – 1113 (ATTWS Comments at pages iv and 32).

[4] Paging technology permits landline calls to be terminated, but does not currently allow for the origination of calls to landline carriers. For paging, therefore, bill and keep would be far more than a simple balancing of offsetting accounts. Instead, bill and keep would result in a massive shift of costs to an industry with no corresponding offsets and with little or no ability to recover the added costs from end users. Done in the name of preventing uneconomic arbitrage by a relative few non-CMRS providers, such a change would in fact punish carriers which have never been guilty of such tactics.

Allied agrees with the First R & O: where costs are roughly balanced, or where a small difference is outweighed by transaction expenses, the parties, or the appropriate commission, may settle on bill and keep. But none of this supports the Commission's proposal to impose bill and keep where costs are not equal, and are not outweighed by transactional expenses. Where there are no offsets of reciprocal obligations as described by Section 252(d)(2)(B) of the Act, and no agreement between the parties, neither this Commission nor any other may require "bill and keep".

BellSouth is almost alone in seeming to argue that the Commission may ignore statutory requirements of "mutual" and "reciprocal" compensation, and the requirement that arbitrated agreements must provide for the mutual recovery of the "additional costs" incurred by terminating carriers. But close scrutiny of the BellSouth arguments shows no more than what most would already concede, i.e. that:

- where costs (not calls) are in approximate balance, bill and keep may be required (BellSouth Comments at paras. 52, 58);
- where parties mutually agree to bill and keep, a state commission may approve their agreement notwithstanding Section 252(d)(2) of the Act (BellSouth Comments at para 54);
- where, as in the situation which will probably arise from the ISP Order, termination compensation levels have been substantially reduced, and fall below transactional costs, there may be justification for a bill and keep regime.

But none of this means, and BellSouth does not appear to seriously argue, that bill and keep may be imposed where costs are not balanced, and the parties have not mutually agreed to offset their respective claims.[5]

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[5] Some commentators recite the mantra that both callers and called parties benefit from communications

B. <u>Section 332(c) May Give The Commission The Power To Pre-empt State Rules As To CMRS Interconnect. But Section 332(c) Does Not Empower The Commission To Override Clear Substantive Protections Given To All Carriers By The 1996 Act</u>.

Arguments based on Section 332(c) also ring true – but only to a point. It is one thing to cite the 1993 law as conferring rulemaking jurisdiction on this Commission as to its CMRS licensees, and quite another to cite the same law as prospectively authorizing the Commission to overrule 1996 legislation that was clearly intended to apply to landline and CMRS carriers alike. In other words, while Section 332(c) almost certainly gives the Commission authority to preempt the states in resolving CMRS interconnect issues, it leaves the Commission subject to the most of the same underlying substantive rules as the states. In the current context, the most important of these substantive rules are that (1) terminating carriers are entitled to recover their additional costs, (2) bill and keep may be mandated only where there are mutually-offsetting obligations, (3) interconnecting carriers have the right directly to exchange traffic at "any technically feasible point" on an ILECs network, and (4) that interconnect facilities and unbundled network elements should be priced on the same basis (Act, Sections 251(c)(2), 251(c)(3), (252(d)(1), 252(d)(2)(A) and 252(d)(2)(B)).

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between them. But this is more a philosophical observation than a legal basis for ignoring the legislative finding that originating carriers – and not called parties – should be responsible for paying the costs of termination. Indeed, even the assumption of "equal benefits" should be questioned. While it may be said with certainty that the calling party benefits from every communication – after all, the calling party chose to initiate the communication – the same is not necessarily true of the called party. The called party has no direct control over those who call him/her and in many cases would refuse calls which resulted in usage-sensitive charges to the recipient.

SBC argument (Comments at p.5) that "end user recovery" mechanisms may serve to replace the intercarrier obligations described by the Act is enormously strained. Section 252(d)(2)(A) requires that there be "mutual and reciprocal recovery" by carriers from each other. Similarly, 252(d)(2)(B) provides for "bill and keep" where there are "offsetting of reciprocal obligations". . Statutes must of course be construed in accord with their "plain language". The plain language of Sections 251(b)(5), 252(d)(2)(A) and 252(d)(2)(B) is that <u>ILECs</u> must establish compensation arrangements with other carriers for <u>terminating</u> traffic, and that "bill and keep" may be applicable where there is "mutual recovery" by carriers from each other of their "reciprocal obligations." <u>Nothing</u> in the statute would support the abolition of this carrier-to-carrier obligation and the re-allocation (even if it were feasible) of termination costs to the called party.

C. Instances Of Uneconomic Arbitrage Are Best Resolved On A Case By Case Basis.

Allied joins with Verizon in warning the Commission against any assumption that "bill and keep" will eliminate uneconomic arbitrage, or that it will reduce litigation (Verizon Comments at p. 1). Allied also agrees in large part with Verizon's description of the ISP dilemma which led to the ISP Order and to this NPRM. The ISP problem arose because actual costs of terminating ISP-bound calls were less than the symmetrical compensation rates derived by the Commission from circuit-switched systems (Id. at p.4). Now that ISP termination compensation rates have been reduced to a level that is lower than actual costs, the incentive to arbitrage has been correspondingly reduced, if not eliminated entirely.[6] Allied would add that many of the ILECs' perceived problems were their own fault. Some ILECs wrongly assumed that ISP traffic balances would be in their favor (a similar preconception clearly drove the ILEC argument against "bill and keep" for cellular carriers). The ILECs might have also profited from more careful negotiation and drafting, and, when negotiations failed, by effective litigation of the underlying cost issues. The ILECs for their own reasons chose initially not to arbitrate these issues between themselves and the relevant CLECs, and have paid a price. Their "problem" has now been solved by a specific remedy. Allied suggests that similar specific remedies should be applied to the perceived difficulties of the status quo, and that across-the-board "solutions" do not exist.

Verizon states, and Allied agrees, that mandatory, across-the-board bill and keep may result in problems that are worse than the ISP experience (Verizon Comments at p.2). Clearly, in a regime where originating carriers are relieved of substantial costs, which are instead transferred to terminating carriers, there will be an impetus to seek customers who generate calls rather than those who receive them. Even more clear is that the ILECs, once free of the obligation to pay transport and termination costs, will lose their post-1996 motivation to deliver calls efficiently. Indeed since they will be in the business of selling transport to terminating carriers at access-based rates , the ILECs will be motivated to insist on a proliferation of facilities, and of lengthy, unnecessarily long hauls.

III.
ARGUMENTS AGAINST "VIRTUAL NXXS" DO NOT APPLY TO CMRS PROVIDERS AND, IF ADOPTED, WOULD SIGNIFICANTLY THREATEN THEIR ABILITY TO COMPETE.

Some commentators desire an across-the-board ban on so-called "virtual NXXs". In doing so, they point to instances of abuse by a relatively small number of CLECs which have allegedly used LERG rating and routing procedures as a device to:

- Convert non-local to local calls for purposes of termination compensation;
- Create pseudo-800 and FX services which unfairly compete with similar services offered by the ILECs; and
- Impose unfair transport obligations on originating carriers.

Allied does not deny the possibility of abuse. Largely due to inartful drafting by the ILECs themselves, certain CLECs have benefited from agreements which permit multiple numbers to be assigned to individual end user units and which result in calls being rated as "local" which are in fact are originated and terminated in different calling areas. As indicated by

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[6] Paging carriers do not have the benefit of the Commission's symmetricality presumption, and are obligated to prove their own TELRIC based costs. While the paging industry has not been particularly happy in assuming this burden, the rule may explain why there have been no credible allegations of paging carriers gaming

the Brooks Fiber litigation, state commissions (or in appropriate cases, this Commission) may fashion appropriate remedies.[7]

The total abolition of so-called "virtual NXXs" is not such an appropriate remedy. As pointed out by Allied and others in initial Comments, CMRS carriers must be free to rate and route land-originated calls to different locations within the same NPA and MTA (See Verizon Wireless Comments at pp. 30 et seq.). This is because:

S It is the ILECs themselves which for their own reasons have created a multiplicity of rate centers. In California a CLEC or CMRS provider desiring to compete would be required to maintain inventories of numbers rated to at least 600 different locations. It is only by duplicating ILEC rate centers that a carrier can ensure that a calls to a pager or a cellular phone from the customer's local community of interest will not result in unanticipated toll charges to the caller.[8]

S There is nothing in CMRS or ILEC architecture which requires the installation of wireline facilities to every rate center where numbers are programmed. Mobile units are, by definition, "on the move" and are accessible only by radio links. Nor is there a requirement for land-originated calls to be routed through the rate center assigned to the called number. On the contrary, cellular and paging switches are, by definition, located elsewhere than on the ILEC network. Thus, the shortest and quickest route for calls addressed to CMRS NXXs is usually by

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the current termination compensation regime.

7 See Order Requiring Reclamation of NXX Codes, Dkt. 99-593, State of Maine Public Utilities Commission (June 30, 2000). .

8 The CMRS industry in particular has repeatedly sought rate center consolidation so as to eliminate unnecessary number inventories. However, ILEC desires to maximize intra-LATA toll revenues have prevented this needed reform.

shared transport from the caller's originating end office to the subtending tandem, and from there by dedicated transport to the CMRS switch.

- There is no evidence of unfair use by CMRS providers of "virtual" rate centers. In all known cases, CMRS rate centers are inside of CMRS service areas where transmitter and other physical facilities have been installed.

S For the above reasons, the installation of added wired links to ILEC rate centers would in most cases be superfluous, and would force CMRS providers not only to maintain their radio-based networks, but also to duplicate large parts of the ILEC wireline network. The benefits

of Type 2 interconnection would be largely lost, since carriers would now have to interconnect at both tandems and end offices. Since in nearly all cases the added facilities would be provided at ILEC tariffed rates (rather than at TELRIC), the only beneficiary of such superfluity would be the ILECs themselves.[9]

Allied has reviewed the comments of all parties favoring the across the board abolition of "virtual NXXs". None of them addresses the need for such NXXs in the CMRS context, or the obvious unfair competitive advantage that would be enjoyed by the ILECs if CMRS providers

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[9] Several commentators have noted that most ILECs charge full access tariff rates – not TELRIC or TSLRIC-based rates – for interconnect facilities. This is despite the clear requirements of the First Report and Order at Sections 440, 627-28. and 47 C.F.R. 51.503(c). See also Third Order on Reconsideration, released August 18, 1997 at paragraph 50 ("AT&T and Ameritech have both presented evidence regarding the costs of dedicated transport facilities linking every end office and tandem in a incumbent LEC's network as significant relative to the cost of "shared transport"…se conclude that the relative costs of dedicated transport , including the associated NRCs is an unnecessary barrier to entry for competing carriers").

In a bill and keep regime, the originating ILEC is clearly motivated to impose added facilities requirements on the terminating carrier. This is because:

- when the added facilities are paid for by the terminating carrier, the originating carrier is relieved of transport and tandem switching costs it has traditionally borne;
- when the ILEC furnish the facilities at tariffed rates (rather than TELRIC-based rates), it garners added profits; and
- the ILEC avoids its statutory and regulatory obligation to provide shared transport between its switches at UNE rates.

were required to duplicate wireline networks. Nor do any of them plausibly argue that alleged abuses could not be solved by less draconian measures.

IV.
INTERCONNECTING CARRIERS SHOULD CONTINUE TO BE ALLOWED TO INTERCONNECT AT ANY TECHNICALLY FEASIBLE POINT ON THE ILEC NETWORK.

ILEC discussion of "virtual NXX" and "tandem exhaust" issues are easily confused:

S The ILECs complain that virtual NXXs may be abused, as where "local" numbers are used to disguise the non-local nature of certain calls.. As noted above, the solution is neither to abolish current practices regarding the routing and rating of NXXs, nor to require unnecessary dedicated transport links to every ILEC rate center. Instead, the solution is to forbid the use of rating and routing points as a device to evade the current access charge regime.

S Concerns over tandem exhaust do not stem from alleged abuses by competing carriers. Rather they are based on the obvious fact that the existence of multiple competitors requires more tandem switch ports and trunk groups than are required in a monopoly network. This "problem" has led some ILECs to demand that connecting carriers take over many ILEC tandem functions, that they establish multiple end office points of interconnection,

S and that the carrier pay the costs of these dedicated <u>links even where they are used to carry ILEC originated calls</u>. In essence, the ILECs seek to shift to others networks costs that should continue to be borne by the ILECs, even in a bill and keep regime.[10]

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[10] Allied notes that at page 26 and in Attachment 2 to its Comments, SBC concedes that the originating carrier in a bill and keep environment, should continue to be responsible for the inter-network facilities needed to transport its calls to the terminating end office. The only qualification is that terminating carriers should create at

Adequate switching capacity should continue to be the responsibility of each carrier. Where the traffic of another carrier contributes to switch exhaust, the current compensation regime mitigates the cost to the terminating carrier. But nothing should require a terminating carrier to install multiple facilities to transport the calls of others on an unreimbursed basis. Not only would this turn the compensation rule on its head, but it would defy Section 252(c) of the Act which allows competing carriers to interconnect "at any technically feasible point" within an ILEC's network. It is for this reason that the first Report and Order properly finds that the trunk side of a tandem is technically feasible , and does not require that carriers establish multiple POIs.

This is not to say that the ILECs are without reasonable tools in addition to simply increasing tandem capacity. One such tool would be for the ILECs to establish direct trunks groups from heavily used end offices for the carriage of ILEC-originated calls. Another would be for the ILECs to price dedicated transport for interconnection purposes at the same TELRIC-based rates as apply to such transport when purchased as an unbundled network element.[11] Finally, and most simply, the ILECs might attempt to negotiate alternative transport methods rather than seeking to impose them by regulatory fiat.

V.
CONCLUSION

Paging carriers are in a unique position. For decades prior to 1996 they experienced the "benefits" of a bill and keep regime. True Type 2 arrangements were difficult to obtain. Instead

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least one POI in each "ASA", which is initially defined as co-extensive with the LATA. Allied believes that this is in fact the current rule, and that it should continue in effect regardless of the outcome of current debate over termination compensation.

[11] Allied looks forward to reading ILEC reply comments which will hopefully explain why, more than five years after clear directive of the First R & O (at paras 627-28), the ILECs continue to bill for local interconnection facilities at access charge rates.

Allied also takes issue with SBC claims (at page 28) that there has been "an incredible growth of competitive transport since 1996". Intra-LATA DS-1 access tariff rates charged by SBC in California have actually carriers were often obligated to interconnect at both tandems and end offices. They were also obligated to pay non-cost justified rates for all facilities utilized exclusively to carry ILEC originated calls.

In other words, because the ILECs had no obligation to compensate for either transport or termination, they were incented prior to 1996 to require excessive and overpriced facilities, and the creation of multiple POIs. They were disincented to extend the efficiencies of Type 2 interconnection to paging carriers and/or to permit such carriers to serve their customers from a small number of high capacity switches. In some cases, as attested by the First Report and Order,

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<u>increased</u> with very few competitive alternatives being available.

the ILECs even imposed per minute usage charges on paging carriers for the privilege of terminating ILEC originated calls.

Following 1996, the paging industry was forced to litigate to obtain the statutory rights that the ILECs freely extended to other carriers. It was only when it became clear that they were responsible for transport and terminations costs, the originating ILECs suddenly began to cooperate in streamlining paging interconnect schemes, and curtailing Type 1 systems.

Now the Commission proposes, without the benefit of new legislation, to entirely reshuffle the deck. The benefits of recently streamlined network architecture would be lost, as would hard-won termination compensation rights. While carriers with offsetting savings would profit from the new regime, carriers without such offsets would be left with no recourse but the courts. Such a result would be a violation of the Act, unfair to those who have relied on the Commission's interpretation of the Act, and bad public policy. .

Respectfully Submitted,

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